

GEORGE E. MERRICK
ALICE J. MERRICK

IBLA 78-186

Decided May 26, 1978

Appeal from decision of the California State Office, Bureau of Land Management, rejecting color of title application CA-4608.

Affirmed.

1. Color or Claim of Title: Good Faith

A color of title applicant lacks the required good faith if he knew when he acquired the land that title was in the United States. If the title defect was not known at the time of acquisition, the good faith must be established for the 20-year period prior to its discovery. If the applicant has not held the land for 20 years, he may tack on the possession of his predecessors in interest, provided they possessed the land in good faith. If any predecessor knew of the title defect, the 20-year period must be established after he divested his interest to someone in the chain of title who did not know of the defect and thus possessed the land in good faith.

APPEARANCES: James E. Pardee, Esq., Susanville, California for Appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

George E. and Alice J. Merrick appeal from the January 11, 1978, decision of the California State Office, Bureau of Land Management (BLM), rejecting their color of title application

CA-4608. Appellants had filed a class 1 color of title application on September 16, 1977, pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 et seq. (1970). ^{1/}

An applicant for a class 1 color of title patent must show that he has held the land "in good faith and in peaceful, adverse possession by a claimant [himself], his ancestors or grantors, under claim or color of title for more than twenty years," among other requirements. 43 U.S.C. § 1068(a) (1970). The State Office held that appellants lacked good faith in that when they acquired title to the land, they knew it was defective.

Appellants applied for a tract of land described by metes and bounds in sec. 24, T. 26 N., R. 9 E., Mt. Diablo Meridian, Plumas County, California. Their chain of title began in 1900 through several conveyances to H. Clarence Near (or Neer) on May 9, 1921. Near conveyed to Nora Beatrice Kelley (also spelled Kelly by appellants), on August 25, 1952. Kelley subsequently married Ellis J. Howerton. In their will, they devised the land to her children, Leonard L. Kelly and Alice B. Gross. Mrs. Howerton died on January 21, 1969. Kelly and Gross conveyed their interest by quitclaim deeds to appellants on August 23, 1976.

Appellants stated in their application that they learned of the defect in the title in 1966 or 1967. Upon inquiry by the State Office, they filed a statement explaining that Nora Beatrice Kelley Howerton is appellant Alice Merrick's aunt. In 1966 or 1967, this appellant accompanied her aunt on a visit to an attorney. Her aunt told appellant at that time that she was discussing with the attorney the resolution of questions concerning the title to the land because she believed the title was still in the United States.

In their statement of reasons, appellant stated they intend to substitute the estate of Nora Beatrice Kelley Howerton as color of title applicant. They allege that she took title without knowledge of defects and in good faith. Although this substitution has not been accomplished, we need not wait to decide this case. This land has a history of color of title applications which effectively prevent any showing of the requisite good faith by appellants. For the reasons stated below, we affirm the decision of the BLM State Office.

^{1/} The division of color of title applications into "class 1" or "class 2" is not by statute, but according to the implementing regulations. See e.g., 43 CFR 2540.0-5.

[1] As stated above, a class 1 color of title applicant must show, among other things, that he or his predecessors in interest held the land in good faith for a period of 20 years. 43 U.S.C. § 1068(a) (1970); 43 CFR 2540.0-5(b). An applicant lacks good faith if he knew when he acquired the land that title was in the United States. Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973). If the defect was not known at the time of acquisition, the good faith must be established for the 20-year period prior to the time the defect in title was discovered. Lawrence E. Willmorth, 32 IBLA 378, 381 (1977); Mable M. Farlow, 30 IBLA 320, 330, 84 I.D. 276, 281 (1977). If the applicant has not possessed the land for 20 years, he may tack on the possession of his predecessors in interest, provided they possessed the land in good faith. Joe I. Sanchez, 32 IBLA 228, 232 (1977); Lawrence E. Willmorth, *supra*; Mable M. Farlow, *supra*. If any predecessor in interest knew of the title defect, the 20-year period must be established after he divested his interest to someone in the chain of title who did not know of the defect and thus possessed the land in good faith. Joe I. Sanchez, *supra*; Mable M. Farlow, *supra*.

When these principles are applied to appellants' application, it is impossible for them to establish good faith possession for 20 years. First, they admit knowledge of the title defect since 1966 or 1967. Therefore, they cannot show their good faith as they knew of the title defect when they acquired the land. Second, their predecessor in interest, Nora Beatrice Kelley Howerton, who acquired her interest in 1952, was aware of the defect for some time prior to November 17, 1964. On that date the Department upheld the rejection of her color of title application for the same land for which appellants have applied. Nora Beatrice Kelley Howerton, 71 I.D. 429 (1964). It also appears that Mrs. Howerton's grantor, H. Clarence Near, was aware of the title defect because he filed color of title application Sacramento 036278 for this land in 1944. This application was rejected by the Department in 1949. Nora Beatrice Kelley Howerton, *supra* at 433.

In conclusion, we find that the required good faith for a 20-year period is lacking. Appellants themselves lack good faith. Day v. Hickel, *supra*. Their purported substitute applicant, the estate of Nora Beatrice Kelley Howerton, could not make the requisite showing even if Mrs. Howerton did not know of the defect when she acquired the land in 1952. She knew of the defect, at least as early as 1963 or 1964. Therefore, she did not have the requisite 20-year holding in good faith. The holding of her predecessor in interest cannot be tacked on as he knew of the defect. The decision of the Department on that issue, Nora Beatrice Kelley Howerton, *supra*, is *res judicata*. Therefore, the BLM State Office properly rejected appellants' application. Day v. Hickel, *supra* at 276-77.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

